Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of		
	)	
Joint Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc. and	)	CC Docket No. 02-35
BellSouth Long Distance for Provision of	)	
In-Region, InterLATA Services in	)	
Georgia and Louisiana	)	

COMMENTS OF
MPOWER COMMUNICATIONS CORP.
ON BELLSOUTH APPLICATION
<u>FOR 271 AUTHORITY</u>

MPOWER COMMUNICATIONS CORP.

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Summary

When interconnection and access to UNEs have been reasonably satisfactory, Mpower has not hesitated to support an RBOC's 271 application and it has supported PacBell's application for 271 authority in California. In the case of BellSouth, however, Mpower continues to have numerous outstanding issues which prevent it from supporting this application.

After more than three years of effort, for example, Mpower has been unable to achieve adequate access to BellSouth OSS for data lines. BellSouth's databases for CLECs, and apparently for themselves as well, are often so inaccurate and incomplete as to be virtually useless to a competitive company. They frequently require multiple orders from CLECs for one customer – that they would handle as one account and one bill – which causes expense, delay and confusion. Month after month, they continue to provide inaccurate and untimely wholesale bills that include charges for circuits have been disconnected, large, unexplained back-billings and other defects.

After finally beginning to provide frame due times for the cutover of lines to CLECs, the due times are so lengthy as to make the process almost meaningless. They fail to provide adequate repair and maintenance and unlike most other RBOCs, have only a manual trouble ticket system, which adds to the lack of communication, delays, frustration and expense.

Further, BellSouth is the only ILEC/RBOC with which Mpower interconnects which has a system for reporting performance which provides no ready means of comparing BellSouth's performance for itself to its performance for CLECs or for that matter, to any benchmarks or performance standards.

Mpower does not believe BellSouth should be granted 271 authority, at this time. Should the Commission grant such authority, Mpower believes that it will be particularly necessary to institute significant anti-backsliding measures which have a significant impact on BellSouth, as well as being self-enforcing. Mandatory, non-monetary processes and procedures aimed at "fixing" recorded problems could operate as such anti-backsliding measures.

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COMMENTS OF
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FOR 271 AUTHORITY

Mpower Communications Corp. ("Mpower") hereby submits its Comments on the issues raised before the Federal Communications Commission ("Commission" or "FCC") by the BellSouth Application of February 14, 2002, for 271 authority.

I. Introduction

In BellSouth's previous filing for 271 authority, Docket No. 01-277, on October 22, 2001, Mpower commented jointly with Network Plus, Inc. and Madison River Communications, LLC. Unfortunately, many of those comments are still valid. In these Comments, Mpower will update those October 22, 2001, Comments and provide more current information on the state of BellSouth's performance or lack of performance with Mpower on the 271 Checklist requirements included in 47 USC 271(c)(2)(B).

II. OSS Issues – Checklist Item II

Checklist Item 2 requires a Regional Bell Operating Company ("RBOC") to provide non-discriminatory access to network elements. Mpower has certainly not found this to be true.

In the area of Operation Support Systems ("OSS"), BellSouth has been particularly inadequate. Initially, BellSouth deployed the internally, BellSouth-developed TAG system for competitive local exchange carrier ("CLEC") direct access to its OSS. The TAG system has undergone nearly constant change from the time of its intended implementation because of the unending number of errors and problems with the system. Each version of this system has had a life span of months, whereas other ILEC systems may have life spans of several years.

Initially, because of the constant changes, which require programming on the CLEC's part as well, it took more than two years to become even minimally functional. Mpower finally was able to use TAG to some extent in January of 2001. At about that time, it was informed that that version of TAG was for data only. After undergoing yet another change or "upgrade," Mpower was able to use TAG for voice in May of 2001.

After attempting to use TAG for data orders for approximately six months, in July of 2001, Mpower was forced to revert to manual ordering for data circuits. BellSouth has never been able to adequately identify and resolve the underlying problems. Mpower would order a data loop and get no response from BellSouth. Sometimes, it would be notified after the fact that Mpower had missed a due date; these due dates would be missed because Mpower had never received notification of the date. The problem is insidious. The connection would frequently be lost for a period of time. Data sent during that period would not be received. Since the system would appear to be working and Mpower would receive no notice of any kind that connectivity had been lost, it would not be aware that data had been lost.

This was totally unacceptable and ultimately, Mpower went back to using manual ordering for data circuits. This, of course, is not only much more time consuming but is much more costly as well. It was, however, the only means by which Mpower could know the order was sent and received and know that a response was sent and received. Data circuits constitute a substantial portion of Mpower's services so this causes a fundamental disruption to its business.

The version of TAG that Mpower received from BellSouth is so totally inadequate that after more than three years of concerted effort and expense to make the product work and to salvage its investment, Mpower is in the process of having to start over with a new system entirely -- an EDI interface which BellSouth has subsequently introduced. As a result of a fundamentally deficient system for access to BellSouth OSS, Mpower is still doing manual orders for data circuits, with all the expense and delay entailed by that process. Once Mpower begins the process of interconnecting to the new interface, it will still take several months before Mpower can verify whether the new system will work adequately. Based upon Mpower's prior experience in interconnecting with BellSouth's OSS, Mpower is far from certain that the new system will perform as promised.

Mpower interconnects with all major ILECs in 28 markets throughout the country. Despite some initial difficulties with other ILEC systems, no other system has been even remotely as great a problem as BellSouth's. For example, Mpower began working with BellSouth in late 1998 on connecting to its OSS system and the system was not functional at all until early 2001. Mpower began working on interconnecting to Ameritech's OSS after it first began working with BellSouth and Mpower has been satisfactorily interconnected with Ameritech's OSS since some time in 2000. BellSouth simply has not provided non-discriminatory access to its OSS, as required by 47 USC 271(c)(2)(B)(ii).

III. "Blind FOCs" – Checklist Item II

Mpower continues to encounter numerous instances of "blind FOCs." A blind FOC occurs when BellSouth promises a firm order commitment date and then on or near the delivery date notifies Mpower that the facility is not available and will not be delivered on the date. Mpower will have scheduled the cutover date with the customer and set up technicians to handle the cutover. BellSouth will simply cancel the date without explanation. The failure of BellSouth is not merely a matter of inconvenience but wastes much valuable time and resources. Furthermore, the customer will not know the cause of the delay and will in all likelihood blame Mower. Such delays in ordering and provisioning of these facilities have a significant impact on the competitive position of CLECs.

IV. Inaccuracies of Databases – Checklist Item II

Mpower employees continue to complain about the exceedingly inaccurate databases made available to CLECs by BellSouth. The databases include information on loop make-up, customer information and facilities availability. Some information is available through a CLEC-accessible subsystem of the BellSouth databases such as LENS. Other information is not available to the CLEC at all, such as type and availability of facilities at the customer premises. Even the information which is available, however, is frequently so inaccurate as to be useless. As a result, Mpower is forced to use more costly and time consuming ordering procedures and processes that put Mpower at a competitive disadvantage.

Mpower recently attempted to do a crosscheck of its databases to verify the accuracy of various information and to make necessary changes to assure greater accuracy. Mpower met with little success in obtaining, clarifying and completing information in the BellSouth region. Both BellSouth and CLECs would benefit from BellSouth's being required to improve the accuracy of its databases. The current system does not offer parity of information. Equally troubling, however, is that much of the information which is available is too inaccurate to be useful.

The inaccuracy of BellSouth's database with regard to loop make-up and facilities availability, for example, has significantly hampered Mpower's plans to provide customers with more robust and competitive high-speed data access through its facilities-based DSLAM network. In BellSouth territory, Mpower is only able to provide contracted customers with service about 45% of the time. In contrast, Mpower's provisioning success rate with other RBOCs ranges from 70-80% from the time of pre-order. The 55% failure rate in BellSouth territory causes heavy costs to Mpower. These costs include payments to BellSouth for pre-order documentation, as well as Mpower sales and technical costs, which must be incurred for each prospective customer that cannot be provisioned due to of the inadequacies of BellSouth processes.

In another example of the lack of parity of information, Mpower has recently encountered problems in transferring customers who have unreported codes on their lines. For example, Mpower will submit an order to transfer a customer and the order will be rejected because of the unreported USOC. Despite the fact that Mpower has a letter of agency ("LOA") from the customer, Mpower will be told the only way the code can be removed and the customer can convert to Mpower is if the CLEC customer contacts BellSouth's retail service and tells them to change it. When the CLEC customer calls BellSouth, they are frequently asked by the BellSouth representative why they are changing to an unreliable CLEC. If the CLEC customer nevertheless requests the change, it then takes up to thirty days for the change to become effective. Clearly, this is not parity, is discriminatory and greatly diminishes the CLEC's ability to provision its customers effectively and in a timely fashion.

V. Need for Multiple Local Service Requests – Checklist Item II

Mpower has also experienced problems with customer service records ("CSRs"). A CLEC needs an integrated processing system that enables it to experience the same seamless ordering process that the incumbent's retail division possesses. BellSouth, however, requires a CLEC to use multiple local service requests ("LSRs") and CSRs for orders and accounts that BellSouth's retail division has on a single account and one bill. When the CLEC tries to order by submitting a single LSR, the order is rejected. CLECs should not be required to submit multiple LSRs and face the coordination problems that multiple LSRs for the same customer generate, particularly when BellSouth places those lines on a single account and one bill.

Also due to LSR space limitations, the CLEC's customer often is required to call BellSouth to request that the order be consolidated. BellSouth's retail division has a history of not responding to these requests, thereby necessitating repeated calls by the CLEC's customer. Mpower cannot process the port request until the consolidation occurs, and this process can take weeks.

In addition, Mpower incurs multiple order charges for what should be one order. If an order is submitted manually in Georgia, Mpower is billed per circuit, not per order, with a first time charge of $18.94 and an additional charge of $8.94.[1] If the order is submitted electronically, each circuit costs $3.50. This policy seriously discriminates against CLECs in the migration of a customer from BellSouth to a competitor. CLECs are forced to endure longer provisioning intervals due to the erroneous rejection of orders and higher acquisition costs because they have to place multiple orders for a single customer.

BellSouth also fails to offer at parity a process for "partial transfers" of service. An example of "partial transfer" is when a CLEC customer has five lines, and wishes to leave four at its present address, but move one to a new address. If the customer were a BellSouth customer, BellSouth would process this transfer under one order. CLECs, however, are required to submit multiple LSRs to do the transfer. The requirement of multiple LSRs forces CLECs to incur extra service order charges, and to accede to extended due dates.

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[1] In other BellSouth states, Mpower is billed per order.

Another parity problem concerning transfers is due to the inaccuracy of BellSouth's records. In order to assure the customer will have service at their "new" location, Mpower is forced to use the costly process of ordering new loops and having them installed before the customer moves in. This is required because BellSouth cannot reserve facilities for CLECs and cannot provide accurate facilities information to CLECs before the day of cutover. Therefore, to guarantee the customer will have facilities when they move in, Mpower must order new loops and have them installed prior to the customer's move-in date.

Should Mpower be notified that facilities are not available, Mpower must then ask its customer to request that BellSouth give them service, as BellSouth is able to provide retail service by means which are not available to CLECs for wholesale provisioning. The result is that CLEC customers are left with the impression that CLECs offer inferior service because CLECs cannot obtain accurate information beforehand and must frequently require the customer to spend additional monies due to the inadequacies of BellSouth's databases. If the customer must ultimately return to BellSouth, they are also billed a full month's service charges plus installation charges to re-establish service with BellSouth.

VI. Failure to Provide Accurate Wholesale Bills – Checklist Item II

Pursuant to Item 2 on the 271 Checklist, RBOCs are also required to provide CLECs with complete, accurate, timely and auditable bills. While the exact nature of the errors has evolved somewhat over time, BellSouth wholesale bills continue to be inaccurate for months at a time, thus also failing to provide timely billings.

Although the billing dispute resolution process has improved to some extent since Mpower's Comments of October 22, 2001, there is still a need for innumerable disputes because of the continuing inaccuracy of BellSouth's wholesale bills. As will be discussed in greater detail below, Mpower and BellSouth agreed to the settlement of an on-going issue, which was to have an effective date of December 1, 2001. The settlement included an agreement on new network categories, more specifically, special access circuits were to become UNEs. Recent billings still do not reflect this change and are having to be disputed.

As reported in Mpower's October 22, 2001, Comments, BellSouth also continues to bill Mpower for many months after Mpower has submitted disconnect orders to BellSouth. This results in having to dispute the same inaccuracy on bill after bill. It adds to the difficulty of auditing bills, as well as adding to the number of disputes which must be filed, tracked and dealt with. This increases not only the required time to review bills but also increases the amount of time which must be spent on the dispute resolution process.

In addition, BellSouth continues to be unable to track the bill disputes and consequently, continues to show the charges as due and owing. This frequently leads to letters threatening to cease providing new loops to Mpower because it erroneously appears to BellSouth that Mpower has not paid undisputed charges. Needless to say, since Mpower must obtain new loops in a timely fashion to provision its customers, such threats require that Mpower take additional time to resolve those BellSouth errors so that it can continue to buy loops.

Periodically, BellSouth back bills for many months of some item, such as directory services or manual billing charges. Not only does some large, new charge suddenly appear on the bill but the charges are seldom identified and supported in a manner that even allows for adequate auditing. Consequently, Mpower must dispute the charges to determine what they include, why they have been billed, etc.

Because of BellSouth's unusually defective wholesale billing system, Mpower must spend far more time on billing disputes with BellSouth than with any other RBOC. Mpower believes that BellSouth falls far short of providing accurate and timely wholesale bills and thus, fails to meet the requirements of 47 USC 271(c)(2)(B)(ii).

VII. Conversion of Special Access Circuits to UNEs – Checklist Item II

As detailed in the October 22, 2001, Comments and as mentioned above, Mpower has had a long-standing issue with BellSouth over BellSouth's failure to provide Mpower with conversion to UNEs at reasonable rates, terms and conditions where Mpower had found it necessary to order special access circuits. The issue was that BellSouth was unwilling to make a routine billing records change of certain special access circuits to UNE rates. At or about the time Mpower filed its opposition to BellSouth's prior 271 application, Mpower and BellSouth agreed upon a settlement of this multi-year dispute. Included in the confidential settlement was an agreed upon date for the change. That date was December 1, 2001. While Mpower continues to be hopeful that this seemingly never-ending dispute will, in fact, be concluded, at this point in time, the conversion of circuits has not been implemented and BellSouth continues to bill Mpower for special access circuits.

VIII. Failure to Provide Adequate Frame Due Times – Checklist Item II

Mpower has filed two ex partes with the Commission, on November 16, 2001 and December 11, 2001, on the issue of BellSouth's unwillingness to provide automated Frame Due Times ("FDTs"). An automated FDT is a process that permits a CLEC to request of the ILEC a date and time that an automated transfer of a customer's service from the ILEC to the CLEC will occur. This process enables the CLEC to test whether or not the customer's service was transferred on time and without trouble, or to work to restore service where the service is transferred with trouble.

While BellSouth has finally instituted an FDT process, it is very unsatisfactory and compares very unfavorably with the processes of other RBOCs, such as SBC and Verizon. SBC and Verizon make a commitment to perform a transfer of service within a time frame of 60 or 90 minutes, respectively, before or after a specified time. BellSouth, on the other hand, will only specify a business day on which the automated transfer will occur. This eliminates the efficiencies of automated transfers.

Thus, under current BellSouth practices, Mpower only knows that some time during the day, the loop will be transferred. This involves a significant possibility that the customer will be without service for several hours or more if the transfer fails. Mpower's only alternative is to pay BellSouth for coordinated "hot cuts," for which it makes a nonrecurring charge of $36. Before BellSouth had any FDT and Mpower was forced to order "hot cuts," this typically cost Mpower more than $150,000 per month in the BellSouth region. The risk of outages inherent in not knowing within some reasonable time frame when transfers will take place, as well as the only available alternative, which is ordering "hot cuts" at a significant cost, both continue to represent substantial barriers to competitive entry in the BellSouth region.

SBC has acknowledged that it is not fair to impose a separate charge for coordination when an automated FDT is not available.[2] BellSouth's failure to provide an adequate FDT process violates BellSouth's obligation to provide nondiscriminatory access to OSS and to unbundled loops. BellSouth should be required to provide an adequate automated FDT process, or at least, not separately charge for coordination of "hot cuts."

IX. Poor Quality Wholesale Repair Service – Checklist Item II

Quality maintenance and repair service is an essential showing to satisfy the OSS requirement of Checklist Item II. Mpower has observed that BellSouth provides better mean time to repair for service issues on SL2 loops than SL1 loops. BellSouth's failure to provide adequate maintenance and repair for SL1 loops is inexplicable aside from the fact that SL2 loops are more expensive. BellSouth knows that CLECs would prefer to avoid the higher cost of the SL2 loop but CLECs are often forced to order the more expensive loops to obtain adequate service.

BellSouth is also one of the few ILECs which lacks an automated or electronic trouble reporting system for SL1 UNE loops. Therefore, if a CLEC does use the SL1 loops, they also must use a costly and labor-intensive manual trouble ticketing system when repairs are needed.

[2] Testimony of John Stankey, President of Wholesale Services, before the California Public Utilities Commission in *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service,* R.95-04-043/I.95-04-044, April 5, 2001, p. 12602.

Mpower has also experienced numerous instances of trouble tickets being closed as "no trouble found" despite the existence of a problem with the facility. BellSouth charges the CLEC for "no trouble found" tickets but not for tickets where trouble is found and repaired. Mpower has followed-up with customers who had "no trouble found" tickets and they all stated that a BellSouth technician did appear and did conduct repairs and the problem was then resolved. BellSouth improperly characterizes these trouble tickets and requires CLECs to incur invalid charges.

BellSouth has consistently provided unreliable and substandard service with regard to operation, ordering and repair, thereby degrading significantly the quality of service that CLECs are able to provide to their end users.

X. Inadequate Reporting of Performance Measures – Checklist Item II

Clearly, in order to determine whether or not BellSouth provides parity of access to network elements to CLECs, there must be adequate measuring and reporting of performance. Other ILECs such as Sprint and GTE/Verizon and RBOCs such as SBC provide accessible, clear, comparable reporting of performance broken down by the following categories: 1) the individual CLEC, 2) Average for all CLECs taking service from the ILEC, 3) ILEC/RBOC performance to itself and 4) service to affiliates.

All other ILECs with which Mpower does business report performance in a way that is clearly measured against the benchmarks mandated by the respective state commissions. With other ILECs, it is easy to know whether the ILEC has fulfilled its obligations or not. Measurements may be viewed month-by-month by category, which shows both current performance and performance trends.

BellSouth, on the other hand, requires a CLEC to look at the PMAP website to see how BellSouth performed for the individual CLEC. That location provides no comparison to Commission mandated benchmarks. BellSouth retail performance is reported in another location and in a manner which provides no clear link to wholesale performance for unbundled network elements. To establish performance criteria, the CLEC must got to yet another location, which contains the Georgia performance measures order, to try to determine whether BellSouth has performed or not. If BellSouth is not intentionally reporting performance in a manner which makes clear comparisons and tracking of performance trends nearly impossible, it certainly is reporting performance in a way which is both confusing and exceedingly cumbersome. The BellSouth system is grossly inadequate for verifying and tracking BellSouth'' performance for CLECs or for itself.

To verify this conclusion, an Mpower employee called a BellSouth employee who is responsible for maintaining the reporting system and asked whether and how one could compare BellSouth performance for Mpower with BellSouth performance for itself. After an hour of trying to work through the system, the BellSouth employee admitted that there was no ready or accurate means of comparing performance.

A consolidated, comparable means of reporting performance is crucial to the ability to determine whether BellSouth meets the standards for nondiscriminatory access. Further, should BellSouth obtain 271 authority, it is necessary to establish subsequent performance so as to identify and prevent "backsliding."

XI. Need for Anti-Backsliding Measures

Mpower believes BellSouth's performance is still highly discriminatory and is inadequate to allow for the granting of 271 authority. Mpower has seen some improvements in BellSouth's performance in the penumbra of this 271 application, however, based on its experience over approximately five years of interconnection with BellSouth, it has little confidence that even the current inadequate levels of access to UNEs will continue should BellSouth be granted 271 authority. To a far greater extent than any other RBOC or ILEC Mpower deals with, BellSouth seems to have been the most inclined to continue discriminatory performance in one manner or another. When one pushes for change in one set of discriminatory behavior, that behavior may be somewhat modified but similar, new discriminatory procedures begin to occur somewhere else. In general, the number of issues with BellSouth continues to be several orders of magnitude above the number of issues with other RBOCs and ILECs.

Unlike most CLECs, Mpower even supported the 271 application of PacBell in California so Mpower's position on BellSouth's 271 application is not just a generalized position against the granting of 271 authority to all RBOCs under all circumstances. Mpower has seen measurable backsliding in other ILECs and RBOCs it has worked with and has a significant concern that no 271 authority be granted without the institution of clearly defined, self-administering anti-backsliding measures.

Given the status of BellSouth's performance reporting, development of adequate anti-backsliding measures could be particularly challenging. One possibility might be to use national, standardized performance measures such as are being considered by the

FCC in Docket No.01-318, Performance Measurements and Standards for Unbundled Network Elements and Interconnection. Another possibility might be the institution of non-monetary "penalties," as suggested by Mpower in that docket.

The most common approach to "encouraging" good performance is "incentive" or penalty payments by RBOCs to poorly served wholesale customers. That is certainly one possibility and Mpower does not oppose such an approach as long as the "incentive" or anti-backsliding payments can be set at a level which does not result in any payments becoming merely a cost of doing business. RBOCs are big businesses and even relatively heavy fines can have a rather small impact on the RBOC bottom line.

The real objective for Mpower and other CLECs is good performance. Any remedy that strays too far from that objective is, therefore, likely to be less than effective. As a result, an alternative that Mpower favors is the establishment of various non-monetary processes and procedures aimed at "fixing" the problems recorded. This could involve a mandatory "truck roll" if certain standards are not met, better or more effective equipment where that is an issue, etc. For example:

1) If BellSouth misses a provisioning measure such as "troubles during installation" in one month, they could be required, at no charge, to dispatch a technician for loop trouble reports for the next month; or
2) Similarly, if BellSouth misses a measure relating to lack of appropriate facilities in one month, it could be required to pre-qualify or "pre-field" facilities for the next month; or
3) Another such situation is the repeated report by BellSouth of no trouble found on trouble tickets but after several dispatches, trouble is found on the

BellSouth side of the network. In such circumstances, BellSouth might be required to create an electronic system for the initiation of trouble tickets. In Mpower's experience, where such an electronic system is used, it improves the Mean Time To Repair trouble significantly.

These are the sorts of effective policies that can cure backsliding rather than just fining BellSouth for non-performance. They can be triggered automatically; they are a more effective remedy; and they may be less contentious and time-consuming to agree upon and implement.

Regardless of which method is used to provide BellSouth with an incentive to perform, however, performance measures and penalties should not be made an exclusive remedy. CLECs should still have the option of filing a regulatory complaint or filing a civil suit when circumstances seem to require such a step. No standardized system, no matter how thoughtfully or well-constructed, can always be adequate, so other remedies should also be available.

XII. Conclusions

Mpower continues to have numerous outstanding issues with BellSouth which prevent it from supporting this application. Mpower does not believe BellSouth meets the requirements of the statute and consequently, believes BellSouth should not be granted 271 authority, at this time. Should the Commission grant such authority, Mpower believes that it will be particularly necessary to institute significant anti-backsliding measures which have a significant impact on BellSouth, as well as being self-enforcing. Mandatory, non-monetary processes and procedures aimed at "fixing" recorded problems could operate as such anti-backsliding measures.

Respectfully submitted,

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